IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1307 of 2000

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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JAYENDRA DALICHAND MEHTA

Versus

JETHALAL KHANGAR MORABIYA

Appearance:

1. Civil Revision Application No. 1307 of 2000

MR SURESH M SHAH for Petitioner

MR CH VORA for Respondent

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 28/08/2002

ORAL JUDGEMENT

Heard the learned advocates.

This Revision Application has been preferred against the judgment and order dated 10th November, 2000 passed by the learned Assistant Judge, Kutch-Bhuj in Civil Regular Appeal No.55/1999 under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Rent Act'). The petitioner before this Court is the tenant (hereinafter referred to as 'the defendant').

The respondent - plaintiff is the owner of the residential house Block No.20, Anand Colony, situated at Bhuj (hereinafter referred to as 'the suit premises'). The suit premises was let to the defendant for a monthly rent of Rs.300=00. The plaintiff instituted Regular Civil Suit No.141/1991 in the Court of Civil Judge (J.D.), Bhuj and prayed for recovery of possession of the suit premises on the grounds, inter alia, that the defendant had acquired suitable accommodation for his residence and that the defendant had ceased to use the suit premises for the purpose for which it was let. The learned trial Judge, under his judgment and order dated 31st March, 1999, was pleased to hold that the defendant had acquired a suitable accommodation for his residence and that he had put the suit premises to non-user as envisaged under Section 13(1)(l) and Section 13(1)(k) respectively of the Rent Act. The trial Court, therefore, passed the decree for possession and the mesne profits. Feeling aggrieved, the defendant preferred above referred Civil Regular Appeal No.55/1999 before the learned Assistant Judge, Kutch-Bhuj. The said appeal was dismissed on 10th November, 2000. Feeling aggrieved, the defendant has preferred the present Revision Application under Section 29(2) of the Rent Act.

Mr.Shah has submitted that both the Courts below have committed a manifest error in throwing the burden of proof upon the defendant. He has submitted that the defendant had categorically denied that the suit premises was given to the defendant for residential purpose alone. It was the specific case of the defendant that the suit premises was given for his business and the suit premises was being used for residence as well as for the business. The acquisition of a suitable accommodation for residence, therefore, should not entail a decree for possession. Besides, even after ceasing to use the suit premises for residential purpose the defendant continued to use the said premises for business purpose. The suit premises having been given for residence as well as for business, the suit premises can not be said to be put to non-use for the purpose for which it was let. The onus of proof that the suit premises was given for residential

purpose alone was on the plaintiff. Unless and until the plaintiff discharges the said onus, no decree for possession could have been passed. However, in the instant case, both the Courts below have proceeded on the premise that the onus of proof lay on the defendant. Consequently, the Courts below have erred in reaching the correct finding based on the evidence on record.

Mr.Shah has taken me through the entire oral evidence. He has submitted that no rent note was executed between the parties. The nature of occupation of the suit premises by the defendant is, therefore, required to be ascertained on appreciation of the evidence on record. He has submitted that the plaintiff himself did not give any evidence. Instead, it was the constituted attorney of the plaintiff who entered the box and gave evidence. The said deponent has categorically stated that he had no personal knowledge as regards the nature of letting of the suit premises to the defendant. There is no other evidence which would establish that the suit premises was given to the defendant for residential purpose alone or mainly for the purpose of residence. He has further submitted that unless it is established that the suit premises was given only for the residence of the defendant, the acquisition of suitable residential accommodation by the defendant pales into insignificance i.e. no decree for possession could be passed on such ground. Moreover, once the suit fails on this ground, it can not succeed on the ground that the defendant ceased to use the suit premises for which it was let i.e. for residential purpose for six months or more. Mr.Shah has, therefore, submitted that the approach of the Courts below is perverse, which has resulted into miscarriage of justice. This Court, therefore, shall exercise its revisional jurisdiction and reverse the decree passed by the Courts below.

The Revision Application has been contested by the learned advocate Mr.C.H.Vora. Mr.Vora has submitted that in view of the concurrent finding recorded by both the Courts below, this Court has no scope to interfere with the said finding in exercise of its revisional jurisdiction. He too has relied upon the evidence. He has submitted that it was the constituted attorney, the deponent who had given away the suit premises to the defendant for residence and thus had a personal knowledge about the nature of the purpose for which the suit premises was given on rent. In support of his argument, Mr.Vora has relied upon the judgments of this Court in the matter of PARIKH AMRATLAL RAMANLAL & ORS. V/S. RAMI MAFATLAL GIRDHARLAL & ORS. [23(2) G.L.R. 337] and of

DOLATRAI HARJIVAN BIBODI AND ANR. V/S. DR.KANTILAL SUKHLAL SHAH [18 G.L.R. 848].

It is true that the plaintiff has not given evidence. However, on overall appreciation of evidence of the constituted attorney and the other witnesses examined by the plaintiff, I am unable to agree with the learned advocate Mr.Shah. It is not true that the plaintiff has failed to discharge his obligation to prove that the suit premises was given to the defendant for residence alone. Besides, if the defendant had been using the suit premises for his business also that should be the fact within the personal knowledge of the defendant. In that case, the burden of proof that the suit premises was being used for business also shall lie on the defendant. Both the Courts below, in my view, have rightly held that the defendant had failed to establish that he had been using the suit premises for business also. It is an admitted fact that the defendant has acquired a suitable residential accommodation. It is also admitted that the defendant has shifted his residence to the house acquired by him. It has also come on record that the defendant has shifted his residence to the house acquired by him since the year 1989. Thus, it is proved that on the date of the suit the defendant had put the suit premises to non-user for more than six months as envisaged in Section 13(1)(k) of the Rent Act.

In above view of the matter, neither of the findings recorded by the Courts below calls for interference. The Courts below have rightly passed the decree for possession in favour of the plaintiff. No interference is warranted. Hence, the Civil Revision Application is dismissed with costs. Rule is discharged.

At the request of the learned advocate Mr.Shah, the interim stay operating pending this Revision Application shall stand extended till 31st October, 2002.

(Ms. R.M. Doshit, J.)

/sakkaf